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EXAMINER

COLBERT, ELLA

ART UNIT PAPER NUMBER

3624

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/354,063

Applicant(s)

CRESCENTI ET AL.

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Claims 1-21 are pending in this communication filed 09/03/02 entered as Response, paper no. 11.
2. The Request for Extension of Time filed 09/03/02 has been entered as paper no. 10.
3. The Drawing Objection still remains.

#### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: In Fig. 1, the reference numbers 117 and 156 are missing from the drawing figure, fig. 3 the reference numbers 312 and 322 are missing from the drawing figure, fig. 7 the reference number 700 is missing from the drawing figure, fig. 8 the reference number 800 is missing from the drawing figure. Correction is required.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: In figure 8 the reference numbers 840, 850, and 860 are not mentioned or described in the Specification. Correction is required.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by (EP0899662 A1) Stephen Gold and Jo~~N~~ Bathie, hereafter Gold and Bathie.

With respect to claim 1, Gold and Bathie teach a first software agent that runs on the first computing unit (col. 2, lines 25-30); a second software agent that runs on the second computing unit, the second software agent communicatively coupled to the first software agent (col. 1, lines 29-36); at least one storage device communicatively coupled to the second software agent (col. 1, lines 47-54); the second software agent controlling physical backup of the data onto at least one storage service (col. 4, lines 17-29); and the first software agent controlling the second software agent (col. 4, lines 1-58 and col. 5, lines 1-6).

With respect to claim 2, Gold and Bathie teach a third software agent that controls backups of a computing unit (col. 5, lines 13-23).

With respect to claim 3, Gold and Bathie teach the third software agent runs on either the first computing device or the second computing device (col. 5, lines 24-36).

With respect to claim 4, Gold and Bathie teach a third computing device wherein the third software agent runs on the third computing device (col. 5, lines 37-58 and col. 6, line 1).

With respect to claim 5, Gold and Bathie teach a plurality of computing devices communicatively coupled to the first software agent, wherein the first software agent controls backup functions for the plurality of computing devices (col. 6, lines 5-12 and col. 11, lines 25-30).

With respect to independent claim 6, Gold and Bathie teach a management software component that operates on the first network device (col. 4, lines 51-54); a

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media software component, communicatively coupled to the management software component, that operates on the second network device (col. 4, lines 41-44 and col. 13, lines 43-57); a storage device communicatively coupled to the media software component (col. 4, lines 21-29); and the management software component controls the media software component (col. 5, lines 1-6).

With respect to claim 7, Gold and Bathie teach a client software component, communicatively coupled to the management software component and the media software component that controls backups of a particular network device (col. 1, lines 40-46, col. 4, lines 51-58, and col. 5, lines 1-6).

With respect to claim 8, Gold and Bathie teach the client software component operates on the first network device (col. 1, lines 40-470).

With respect to claim 9, Gold and Bathie teach the client software component operates on the second network device (col. 2, lines 25-30).

With respect to claim 10, Gold and Bathie teach a third network device wherein the client software operates on the third network device (col. 2, lines 36-43).

With respect to claim 11, Gold and Bathie teach a management software component that operates on a first network device of the plurality of network devices (col. 4, lines 51-54).

This independent claim is also rejected for the similar rationale given for claim 6.

With respect to claim 12, this dependent claim is rejected for the similar rationale given for claim 7.

With respect to claim 13, Gold and Bathie teach any two of the client software component, the media software component, or the manager software component operate on one of the plurality of network devices (col. 11, lines 25-49).

With respect to claim 14, Gold and Bathie teach the management software component controls backup functions for the plurality of network devices (col. 6, lines 5-20).

With respect to claim 15, Gold and Bathie teach the media software component creates an index of information on the location of archived information on the storage device, and communicates at least part of the index of information to the management software component (col. 13, lines 11-20, col. 16, lines 33-46, col. 17, lines 10-13, and col. 18, lines 39-56).

With respect to claim 16, Gold and Bathie teach at least one backup device communicatively coupled to the media software component (col. 11, lines 37-49); the client component software controls backups of any particular computing device (col. 5, lines 37-50); and at least one of either the media software component or the client software component runs on the second computing device (col. 4, lines 41-55).

This independent claim is also rejected for the similar rationale given for claims 6, 7, 11, and 12.

With respect to claim 17, Gold and Bathie teach the management component software controls backups of the plurality of computing devices (col. 5, lines 1-6 and col. 11, lines 7-15).

This dependent claim is also rejected for the similar rationale given for claim 7.

With respect to claim 18, Gold and Bathie teach at least one backup device (col. 11, lines 20-22).

This dependent claim is rejected for the similar rationale given for claim 15.

With respect to claim 19, Gold and Bathie teach the management component software and the media component software operate on different computing devices (col. 16, lines 1-18).

With respect to claim 20, Gold and Bathie teach the management component software and the media component software operate on the same computing device (col. 11, lines 16-30).

With respect to claim 21, Gold and Bathie teach the backup device comprises a plurality of different media (col. 11, lines 31-48, col. 13, lines 47-58, and col. 14, lines 1-4).

### ***Response to Arguments***

7. Applicant's arguments filed 09/03/02 have been fully considered but they are not persuasive.

1. Applicants' argue: Gold and Bathie do not describe a first software agent that runs on a first computing unit controlling a second software agent running on a second computing unit which controls physical backup of data on at least one storage device has been considered but is not persuasive because Gold and Bathie teach a first software agent that runs on a first computing unit controlling a second software agent running on a second computing unit which controls physical backup of data on at least one storage device in fig. 2, step 210a, 215a, and 230a and fig. 3, col. 2, lines 25-30, col. 4, lines 45-68, and col. 5, lines 1-6 ("the software routines are stored on a hard disk ..."). It is not clear to the Examiner in the Specification what Applicants' mean by "physical backup". Clarification in the Specification and the claim language is requested.

2. Applicants' argue: Gold and Bathie only describe a single tier architecture for performing backups and restores and do not control the backup server has been considered but is not persuasive because claim 1 does not disclose or suggest a single

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tier architecture for performing backup and restores. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

3. Applicants' argue: Gold and Bathie do not have the ability to load balance backups and restores for the computer network has been considered but is not persuasive based on Applicants' argument that the references fail to show certain features of Applicants' invention, it is noted that the features upon which applicant relies (i.e., to "load balance backups and restores for the computer network") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

4. Applicants' argue: using multiple backup servers to eliminate the creation of a bottleneck at the backup server problem is not discussed by Gold and Bathie and at any rate, such would obviate advantages of a first software agent controlling one or more second agents as previously been discussed has been considered but is not persuasive because it is interpreted that Gold and Bathie do teach more than one backup server as shown in figure 2.

5. Applicants' argue: Gold and Bathie do not describe a backup and retrieval system "operating on a first network device and a second network device as claimed in independent claim 6, in which a management software component that operates on a first network device controls a media software component on a second network device has been considered but is not persuasive based on the claim limitation is not interpreted as stating ("... a management software component that operates on a first



network device controls a media software component on a second network device which controls backup of data to a storage device.” The claim recites “a management software component that operates on the first network device; a media software component, communicatively coupled to the management software component, that operates on the second network device; a storage device communicatively coupled to the media software component; and the management software component controls the media software component.”

6. Applicants' argue: Gold and Bathie do not describe a backup and retrieval system ...” has been considered but is not persuasive because “a backup and retrieval system operating across a network containing a plurality of network devices” is recited in the preamble of claim 11. In response to applicant's arguments, the recitation “a backup and retrieval system operating across a network containing a plurality of network devices” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Gold and Bathie are interpreted as teaching a management software component that operates on a first network device in col. 4, lines 51-54. Claim 11 does not recite “... a first network device controls a media software component ...”. Claim 11 recites “a

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management software component that operates on a first network device of the plurality of network devices; a media software component communicatively coupled to the management software component; a storage device, communicatively coupled to the media software component, the media software component controlling backups to the storage device; and wherein the management software component controls the media software”.

7. Applicants’ argue: Gold and Bathie do not describe “a backup and retrieval system ...” has been considered but is not persuasive because it is interpreted that Gold and Bathie teach a backup and retrieval system in col. 2, lines 53-56 (“... some of items of data in the request (retrieval) are already stored” (backup)).

#### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.